

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JENNIE CROCKER HENDERSON)

Appearances:

For Appellant: Brobeck, Phleger & Harrison,
Attorneys at Law

For Respondent: Burl D. Lack, Chief Counsel;
Milton A. Huot, Mark Scholtz
and Paul L. Ross, Associate
Tax Counsels

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code (formerly Section 19 of the Personal Income Tax Act) from the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protest of Jennie Crocker Henderson to proposed assessments of additional personal income tax in the amounts of \$756.81 and \$958.52 for the years 1940 and 1941, respectively.

Appellant, on November 4, 1940, created a trust for the benefit of her minor son, Robert Easton Henderson. The trust was to continue until Robert reached the age of twenty-one (21) years, at which time it would terminate and the corpus vest in Robert. In the second paragraph of the trust instrument the trustees were directed to accumulate the net income from the trust. Paragraph three of the instrument read as follows:

"Third. The Trustees shall have power to apply and expend such amounts of the income or corpus of the trust property as may in their judgment be necessary or proper for the maintenance, education, support and/or advancement of said Robert Easton Henderson, and the determination of the Trustees as to the amounts to be so applied and expended

shall be conclusive."

During the years in question, while Robert was still a minor for whose support she was legally responsible, the Appellant was able to and did support her son with her personal funds, none of the trust income being used or distributed for that purpose. The Commissioner, however, on the basis of the decisions in Borroughs v. McColgan, 21 Cal. 2d 481, and Helvering v. Stuart, 317 U. S. 154, taxed the entire trust income to Appellant under Section 12(h) of the Personal Income Tax Act (now Section 18172 of the Revenue and Taxation Code) because of the possibility of its use to discharge her legal obligation to support her minor son.

In the Appeal of S. F. Pellas, decided this day, we distinguished from the Borroughs and Stuart cases a trust substantially similar to that here involved. For the reasons set forth in our opinion in that matter, the action of the Commissioner must be reversed herein.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED RND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) on the protest of Jennie Crocker Henderson to proposed assessments of additional personal income tax in the amounts of \$756.81 and \$958.52 for the years 1940 and 1941, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 22d
day of July, 1952, by the State Board of
Equalization.

J. L. Seawell, Chairman

_____, Member

Geo. R. Reilly, Member

J. H. Quinn, Member

Thomas H. Kuchel, Member

ATTEST: Dixwell L. Pierce, Secretary